

3. This Court may properly maintain personal jurisdiction over Defendants because their contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendants are deemed to reside where they are subjected to personal jurisdiction, rendering Defendants residents of the Eastern District of Pennsylvania.

PARTIES

5. The foregoing paragraphs are incorporated herein their entirety as if set forth in full.

6. Plaintiff is an adult who resides at the above-captioned address.

7. OmniMax International, Inc. (*hereinafter* individually referred to as “Defendant OmniMax”) is a leading manufacturer of building and transportation products, with headquarters at the address set forth in the above caption.

8. Berger Building Products, Inc. (*hereinafter* individually referred to as “Defendant BBP”), a subsidiary brand of Defendant OmniMax, specializes in a wide variety of roofing protection, gutter support and draining systems, with a facility located at the above-captioned address.

9. The business names set forth above were used interchangeably on Plaintiff’s employment documents and internal documents within Defendants during his employment with Defendants.

10. Upon information and belief, because of their interrelation of operations, common ownership or management, centralized control of labor relations, common ownership or financial

controls, and other factors, Defendants are sufficiently interrelated and integrated in their activities, labor relations, ownership and management that they may be treated as a single and/or joint employer for purposes of the instant action.

11. At all times relevant herein, Defendants acted through their agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendants.

FACTUAL BACKGROUND

12. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

13. Plaintiff was hired by Defendants in or about September of 2003, as a Machine Operator/Press shop, to work out of Defendants' Feasterville, Pennsylvania location. He was subsequently transferred to Defendants' 900 Jacksonville Road, Ivyland, Pennsylvania location. In total, Plaintiff worked for Defendants for approximately 17 years before his unlawful termination (discussed further *infra*) on or about June 25, 2020.

14. At the time of his termination, he was supervised by Manager, Tami McCarty (*hereinafter* "McCarty").

15. Throughout his tenure with Defendants, Plaintiff was a hard-working employee who performed his job well.

16. At all relevant times during his employment with Defendants, Plaintiff's young son has and continues to suffer from serious health conditions, including but not limited to severe asthma, sleep apnea, and chronic headache disorder (and associated complications).

17. As a result of his aforesaid serious health conditions, Plaintiff's son experiences headaches and breathing problems, which require frequent nebulizing breathing treatments.

18. During his employment with Defendant, Plaintiff sometimes needed to take intermittent time off from work to care for his son, which included taking him to doctors' visits and administering nebulizing treatments at home for his son's asthma.

19. Beginning in or about 2011/2012 through his termination on or about June 25, 2020, Plaintiff requested and was approved for intermittent time off from work under the FMLA to care for his son because of his health conditions (described *supra*), and at all relevant times herein, Defendants' management and Human Resources ("HR"), including but not limited to McCarty, were aware of Plaintiff's son's serious health conditions.

20. Plaintiff renewed his FMLA leave to care for his son because of his aforesaid health conditions on a yearly basis without issue until in or about 2018 when McCarty took over supervision of Plaintiff.

21. Following the arrival of Defendants' new management, Plaintiff began to be subjected to multiple forms of hostility and animosity because of his need for intermittent time off and requests for FMLA leave related to son's serious health conditions. By way of example, but not intended to be an exhaustive list:

- a. Defendants' management began to overly scrutinize and criticize Plaintiff's work;
- b. McCarty and HR exhibited clear frustration with Plaintiff's need to take time off from work in order to attend doctor's appointments or administer nebulizing treatments for his son;
- c. McCarty and HR began to interfere with Plaintiff's FMLA rights by refusing to provide him with FMLA paperwork on several occasions, preventing him from renewing his FMLA leave for his son's aforesaid serious health conditions on

several occasions, informing Plaintiff that Defendants were “cracking down on the use of FMLA leave”; and

- d. Plaintiff was given verbal and written discipline for alleged “attendance violations” for FMLA qualifying absences on more than one occasion, despite the fact that she remained in constant contact with Defendants management and HR by texting “FMLA” to McCarty to signify that he was utilizing intermittent FMLA leave (often got only an hour or two) for a flare-up of his son’s asthma and/or to provide nebulizing treatments.

22. Additionally, leading up to his termination, Plaintiff completed and was approved for renewed FMLA leave for his son’s health conditions in or about January/February of 2020. Shortly thereafter, however, Plaintiff and his co-workers were furloughed due to the COVID-19 pandemic.

23. Incredulously, Plaintiff was then retaliatorily assessed several attendance points purportedly for infractions that occurred on dates that Defendants’ facilities were closed and Plaintiff was furloughed.

24. In or about April/May of 2020, Defendants’ facilities re-opened, and Plaintiff was called back to work from furlough.

25. Following his return to work from the aforesaid COVID-19 pandemic furlough, Plaintiff continued to utilize intermittent FMLA leave as needed for his son’s aforesaid serious health conditions, until his abrupt termination on or about June 25, 2020.

26. At the time of Plaintiff’s termination on or about June 25, 2020, he was provided *for the first time* with four disciplinary notices all at once for alleged attendance violations, dated from June 19, 2020 through June 24, 2020.

27. However, at no time prior to receiving all four disciplinary notices on June 25, 2020 was Plaintiff counseled about attendance issues nor did Defendants follow their progressive disciplinary process, despite falsely indicating otherwise on the notices.

28. The aforesaid disciplinary notices are clearly pretextual and were issued for reasons selectively enforced against Plaintiff because of his requests for/utilization of FMLA leave, as a majority (if not all) of the of the attendance points Plaintiff had been assessed were for FMLA-qualifying leave for his son's aforesaid serious health conditions.

29. Following his termination and after threatening legal action (through his union), Plaintiff was permitted to return to work on or about November 20, 2020, but he was not awarded damages for his wrongful termination.

30. Plaintiff believes and therefore avers that he was terminated from his employment in violation of the FMLA (discussed further *infra*).

COUNT I
Violations of the Family and Medical Leave Act ("FMLA")
(Interference & Retaliation)
-Against Both Defendants-

31. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

32. Plaintiff was an eligible employee under the definitional terms of the FMLA, 29 U.S.C. § 2611(a)(i)(ii).

33. Plaintiff requested leave from Defendants, his employer, with whom he had been employed for at least twelve months pursuant to the requirements of 29 U.S.C.A § 2611(2)(i).

34. Plaintiff had at least 1,250 hours of service with Defendants during his last full year of employment.

35. Defendants are engaged in an industry affecting commerce and employ fifty (50) or more employees for each working day during each of the twenty (20) or more calendar work weeks in the current or proceeding calendar year, pursuant to 29 U.S.C.A § 2611(4)(A)(i).

36. Plaintiff was entitled to receive leave pursuant to 29 U.S.C.A § 2612 (a)(1) for a total of twelve (12) work weeks of leave on a block or intermittent basis.

37. Plaintiff was terminated in close proximity to his requests for/utilization of intermittent and/or block FMLA leave.

38. Defendants committed interference and retaliation violations of the FMLA by: (1) terminating Plaintiff for requesting and/or exercising his FMLA rights and/or for taking FMLA-qualifying leave; (2) by considering Plaintiff's FMLA leave needs in making the decision to terminate him; (3) terminating Plaintiff to intimidate him and/or prevent him from taking FMLA-qualifying leave in the future; and (5) engaging in conduct which discouraged Plaintiff from exercising his FMLA rights and which would discourage, dissuade and/or chill a reasonable person's desire to request and/or take FMLA leave.

39. These actions as aforesaid constitute violations of the FMLA.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants' illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority.

B. Plaintiff is to be awarded liquidated damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their

willful, deliberate, malicious and outrageous conduct and to deter Defendants or other employers from engaging in such misconduct in the future;

C. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate (including but not limited to damages for emotional distress/pain and suffering);

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law;

E. Plaintiff is to be given a jury trial as demanded in the caption of this Complaint.

Respectfully submitted,

KARPF, KARPF & CERUTTI, P.C.

By:



Ari R. Karpf, Esq.
3331 Street Road
Two Greenwood Square, Suite 128
Bensalem, PA 19020
(215) 639-0801

Dated: June 30, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Michael Hansbury

CIVIL ACTION

v.

NO.

Omnimax International, Inc., et al.


In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

6/30/2021

Date


Attorney-at-law

Plaintiff

Attorney for

(215) 639-0801

(215) 639-4970

akarpf@karpf-law.com

Telephone

FAX Number

E-Mail Address

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 800 Trenton Road, Apt 20, Langhorne, PA 19047

Address of Defendant: 30 Technology Parkway S., Suite 400, Peachtree Corners, GA 30092; 900 Jacksonville Road, Ivyland, PA 18974

Place of Accident, Incident or Transaction: Defendants place of business

RELATED CASE, IF ANY:

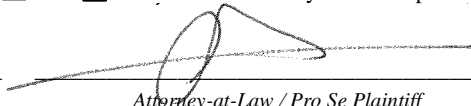
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/30/2021


Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases
- (Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases
- (Please specify): _____

ARBITRATION CERTIFICATION

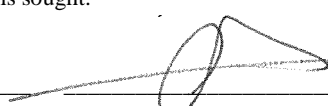
(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Ari R. Karpf, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 6/30/2021


Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

